

**ARIZONA SUPREME COURT
ADMINISTRATIVE OFFICE OF THE COURTS
INVESTIGATION SUMMARY**

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| CERTIFICATE HOLDER INFORMATION | Certificate Holder: | Anita Royal |
| | Certification Number: | 20241 |
| | Business Name: | Pima County Public Fiduciary |
| | Certificate Number: | 20247 |
| | Type of Certificate/License: | Public |
| COMPLAINANT | Name: | Joyce M. James, JD |
| INVESTIGATION INFORMATION | Complaint Number: | 10-0016 |
| | Investigator: | Wendy Reiter |
| | | Karla Clanton |

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| Complaint Received: | November 17, 2010 |
| Complaint Forwarded to the Certificate Holder: | November 19, 2010 |
| Certificate Holder/Licensee Received Complaint: | November 22, 2010 |
| Response From Certificate Holder: | May 17, 2011 |
| Period of Active Certification/Licensure: | 6/29/1999 – Inactive as of 7/12/12 (Royal) |
| Period of Active Certification/Licensure: | 7/23/1999 – Present (Pima County Public Fiduciary) |
| Status of Certification/License: | Inactive (Royal) |
| Status of Certification/License: | Active (Pima County Public Fiduciary) |
| Availability of Certificate Holder/Licensee: | Available |
| Availability of Complainant: | Available |
| Report Date: | June 23, 2015 |

ALLEGATIONS:

1. Joyce James (“James”) alleges Anita Royal (“Royal”) failed to segregate seized but disputed assets.
2. James alleges Royal invested seized assets without complying with statutory requirements so that the funds that had previously been held in guaranteed bank deposit investments decreased in value due to stock market risk.
3. James alleges Royal spent seized assets on litigation, after the sanctions order assessing ownership to the ward was appealed and; without any court authorization, spent seized assets for the expenses of one of the parties to the disputed funds without knowing who the owner of the funds was.
4. James alleges Royal had ex-parte communications with the court not related to an emergency.
5. James alleges Royal seized assets rather than fulfill her duty to protect assets and ascertain ownership of assets.

6. James alleges Royal lied to a judge of Superior Court in contravention of Ethical Rules.
7. James alleges Royal has demonstrated a lack of concern for truthfulness and veracity.

List of sources for obtaining information: (Investigative, records, outside resources, etc.):

The investigation of this complaint included the following:

- Written complaint and documentation submitted by complainant
- Written response and documentation submitted by certificate holder
- Pima County Superior Court and Arizona Court of Appeals II records
- Review of Certification and Licensing Division (“Division”) records
- Review of applicable Arizona Code of Judicial Administration (“ACJA”) §§ 7-201 and 7-202, Arizona Supreme Court Rules and Arizona Revised Statutes (“A.R.S.”) Title 14 and Title 46

PERSONS INTERVIEWED:

1. Amy Hubbell (“Hubbell”), attorney for the Pima County Public Fiduciary (PCPF)

SUMMARY OF INVESTIGATION:

James alleges that in her efforts to marshal her ward, Cherie Van Dyke Adams’ (“Adams”), assets, Royal over zealously pursued bank accounts, investment accounts and property which may have belonged to Adams’ former Power of Attorney, Jack Rappeport (“JJR”) and his wife, Ginger Rogers Rappeport (“GRR”). James proposes that in that pursuit, Royal inappropriately seized assets rather than determining ownership, used those seized assets without court authority for litigation (against JJR and GRR) and Adams’ care, and irresponsibly invested the assets which were formerly in guaranteed bank deposits into higher risk investments that resulted in a \$220,000.00 loss. The complainant further alleges that Ms. Royal violated her ethical obligations in being a party to ex-parte communications with the court concerning JJR’s alleged insufficient response to a discovery order on June 7, 2007, and in misrepresenting the orders of Judge Munger to Judge Kelly with regards to the filing of a petition for conservatorship of JJR in a probate hearing on January 29, 2008. Additionally alleged discovery violations with regards to noticing interested parties and disclosure of a check which may have been exculpatory are set forth as evidence of Royal’s lack of concern for truthfulness and veracity.

In response, Royal states that the complaint filed by James is the rehashing of issues presented in dismissed complaint 07-0024 filed by GRR in September of 2007, in which neither of the allegations were substantiated. Royal argues that the public fiduciary was given authority to seize the assets based on an order entered by Judge Munger on February 8, 2007, due to indications of JJR’s exploitation of Adams and that neither the decision nor

the preliminary injunction were the subject of an appeal. Furthermore, Royal asserts that the public fiduciary gathered fourteen notebooks full of financial records and conducted multiple depositions in an earnest effort to discern ownership of the seized funds. Royal states that once the seized assets were made the sole property of Adams in the sanctions judgment of August 2007, they were prudently invested pursuant to her fiduciary duty and those investments yielded an \$11,518.98 gain over the three year period from 2007-2010, contrary to the purported loss alleged by the complainant. With regards to the alleged ex-parte communications of June 7, 2007, Royal denies that any inappropriate conduct occurred during the June 7, 2007 status conference and also denies that she misrepresented Judge Munger's orders in an attempt to gain an unfair advantage in settlement negotiations, stating that her sole purpose in filing a petition to establish a conservatorship for JJR was to expedite the settlement proceedings. Royal also disputed the complainant's contention that her failure to notice the Rapports when she filed the annual accountings for Adams and the lack of disclosure of a check that Adams had signed, constituted a lack of concern for truthfulness and veracity as she had complied with both court orders for discovery once the issues had been raised in court.

SUMMARY OF FACTUAL FINDINGS OF INVESTIGATION:

1. The PCPF was appointed Temporary Conservator for Adams from February, 2007 until permanent conservatorship was established March 15, 2007 (Pima County Superior Court case number GC-2007-0078). On January 28, 2008, the conservatorship was converted to a guardianship and PCPF was appointed to permanent guardianship which continued until Adams' death on May 21, 2010.
2. On November 17, 2010, the Division received a written complaint from James which stated:

This complaint will show that Anita Royal, the PCPF, in the course of this proceeding routinely exceeded her statutory authority, violated basic principles applicable to fiduciaries and engaged in unethical conduct including commingling, unauthorized expenditure of and waste of seized funds, ex-parte communications with the court and misrepresentations to the court.

The following allegations were listed under the heading "Complaints Against Anita Royal, an Arizona Attorney and Pima County Public Fiduciary":

1. Failure to segregate seized but disputed assets.
2. Investing seized assets without complying with statutory requirements so that the funds that had previously been held in guaranteed bank deposit investments decreased in value due to stock market risk.
3. Spending seized assets on litigation, after the order was appealed and, without any court authorization at all, spending seized assets for the

expenses of one of the parties without knowing who was the owner of the funds.

4. Ex-parte communications with the court not related to an emergency: limited to Anita Royal.
5. Attempting to seize assets rather than fulfill her duty to protect assets and ascertain ownership of assets.
6. Lying to a Judge of Superior Court in contravention of Ethical rules: limited to Anita Royal.
7. Demonstrating a lack of concern for truthfulness and veracity.

James states that on February 2, 2007, Pima County Superior Court Judge Munger issued an injunction citing A.R.S. § 46-455 to prevent JJR from accessing his liquid and real property assets based on a petition filed by the PCPF. The assets included bank accounts totaling \$2.17 million dollars, the Rappeport home and other real estate holdings. Complainant alleges that at that time only one bank account with a balance of \$4,562.00 was jointly held by Adams and JJR and all other assets were held in JJR's name individually. The complainant states that the petition arose from a referral of the University Medical Center to the PCPF, which resulted in a vulnerable adult investigation into JJR's handling of Adams' financial affairs as power of attorney for Adams, from the late 1990's until the filing of the petition for injunction. James asserts that PCPF was to place the funds into the fiduciary's trust account "pending the outcome of this case" per court order dated May 14, 2007 and that when Royal took possession of the funds in June of 2007, Royal did so prematurely and that the act of taking possession of disputed funds in essence made Royal and the PCPF the fiduciary for both Adams and JJR. James states that the failure to segregate the disputed funds both before the sanctions judgment was issued and after the appeal was filed amounts to co-mingling of assets and is a violation of Ethical Rule 1.5 as the funds were in dispute.

The complaint also alleges in managing the seized but disputed assets, that in contravention of A.R.S. § 14-5603, Royal did not gain approval for an investment plan and also did not continue guaranteed deposit investments as had been the previous investment practice of the "owners," but instead invested \$1.9 million of the \$2.17 million into mutual funds managed by Morgan Stanley and Bernstein Alliance. James states that this unauthorized investment resulted in a \$220,000.00 loss in market value and was a breach of the fiduciary's duty to apply the Prudent Investor Rule in managing assets.

James states that in addition to the unauthorized investments, Royal failed to protect and preserve the disputed assets by expending them on litigation for the expenses of one party without court authorization. The complainant alleges that Royal had a duty to preserve the assets that were in dispute once the sanction order was vacated by the Court of Appeals and that the previously obtained authorization to expend funds for litigation was a violation of due process as it was the result of ex-parte communications at the June 7, 2007 scheduling conference. James alleges that Adams had in excess of \$162,000.00 in undisputed assets that could have been

used for litigation and her care and that the hiring of “special counsel,” William Walker, was an excessive and unnecessary expenditure that should have been paid either by the PCPF or Adams. In addition, complainant states that even if Royal had been given authorization to use the funds for litigation, PCPF never obtained the authorization to expend the seized assets for Adams’ care.

Complainant further alleges that ex-parte communications occurred between Royal and Judge Munger during the June 7, 2007 scheduling conference in violation of Ethical Rules. Per James it was during this conference that authority was given to Royal to expend seized assets on litigation making the resulting order of August 1, 2007 a violation of JJR’s due process as he was not in attendance nor represented at the scheduling conference.

James opines that once the sanctions judgment of August 21, 2007, which assigned all assets seized in the February 2, 2007 injunction to Adams, was overturned in October of 2008, Royal and PCPF had a duty to ascertain the amount of funds that may have been converted by JJR pursuant to A.R.S. § 46-456 as opposed to A.R.S. § 46-455. Complainant states that rather than ascertaining ownership and determining the appropriate damages under A.R.S. § 46-456 so that Adams could be supported, Royal pursued sanctions and confiscation of property against JJR in contravention of E.R. 3.3 and E.R. 4.4. Per the complainant, by January of 2008, Royal should have been aware that Adams had signed all of her own financial transactions including those that involved joint accounts with JJR, which complainant asserts, meant that there was no evidence of commingling. The complainant states that once a financial audit of JJR and GRR’s assets was completed in late 2007–early 2008, Royal should have been able to assess damages based on the modest amount of assets in Adams’ name discovered by the audit; but instead, Royal pursued sanctions and confiscation of property against the Rappeports during settlement negotiations, in bad faith.

James also alleges violation of ER 3.3 and ER 4.1, stating that Royal lied to Judge Kelly during a hearing for limited conservatorship of JJR on January 29, 2008. The complainant states that Royal told Judge Kelly that Judge Munger had ordered her to file a petition for conservatorship of JJR in a hearing on January 24, 2008. Per the complainant, the transcript of the January 24th hearing “does not leave any impression” that Royal was authorized or ordered to file a petition. James reasons that Royal’s petition was an attempt to gain unfair advantage in litigation by having her own choice of conservator appointed for JJR.

The complaint concludes that Royal has demonstrated a lack of concern for truthfulness and veracity by: 1) claiming JJR was competent while filing a petition for limited conservatorship of JJR; 2) claiming a person whose assets were seized by the public fiduciary is not an interested party; 3) refusing to provide annual accountings to JJR’s attorney; and 4) failing to disclose check #107 of a BB&T account signed by Adams. This lack of concern, per the complainant resulted in significant financial losses and extended unnecessary litigation.

3. On May 17, 2011, the Division received a written response from Royal on behalf of the PCPF and herself. The response states that the underlying case in 10-0016 is the same as that in complaint number 07-0024 and is premised upon many of the same facts in the 2010 complaint which was dismissed by the Board in July of 2009. Royal explains that the PCPF was contacted to investigate negligence and possible exploitation of Adams by JJR through a referral from Adult Protective Services ("APS"). Per Royal, APS records showed that Adams had been hospitalized for falls in December 2006 and January 2007 and that prior to hospitalization, Adams was living without heat, hot water or telephone.

Royal states the PCPF's investigation of a joint bank account held by JJR and Adams, evidence that JJR had deeded Adams' house to himself using his power of attorney, and reports that JJR was in possession of and using Adams' car, along with his lack of cooperation during the investigation resulted in the February 2, 2007 emergency hearing on the Petition for Appointment of Conservator, Temporary Restraining Order and Order to Show, Petition for Surcharge, Notice of Lis Pendens and Application for Preliminary Injunctions. The injunctive relief was granted with regards to property and bank accounts of JJR, GRR and Adams and JJR was ordered to immediately turn over records detailing his use of Adams' power of attorney from time of execution in June of 1997 to January of 2007. Royal states that JJR failed to comply with any portion of Judge Munger's order, most specifically he failed to account for actions taken pursuant to powers of attorney and de facto conservatorship of Adams. Per Royal, this non-compliance and inaction on JJR's part resulted in the August 21, 2007 sanctions judgment that forfeited any interest JJR and GRR may have possessed in the assets which were initially frozen in February of 2007.

Royal disputes that she and the PCPF's office had any duty to segregate the assets that were seized pursuant to the February 2, 2007 injunction. Per Royal, prior to the August 21, 2007 sanctions judgment, all subject funds were placed in the Pima County Public Fiduciary's pooled trust account as ordered, and subsequent to the sanctions judgment, all assets became the sole property of Cherie Adams and thus segregation was not required as the Rappeports no longer retained any interest in the subject funds. Also disputed is the assertion that once PCPF took possession of the funds, it became the fiduciary for JJR citing lack of any applicable case law in support of that argument. Royal states that PCPF's sole fiduciary duty was to Adams and the proper management of her estate. With regards to the fiduciary's alleged duty to segregate the funds once the Rappeport's appealed the August 21, 2007 sanctions judgment, Royal states that the Rappeport's had the option of requesting a stay of the proceedings by filing the requisite bond with the court to do so, but they did not. Royal also points out that although the Court of Appeals did reverse the sanctions judgment, it did not argue that JJR should not have been sanctioned, just that the severity of the sanctions should be reconsidered by the superior court along with consideration of JJR's competency issues. In addition, Royal states that at no time during the proceedings, neither before nor after the

October 2008 Court of Appeals decision, did the Rappeports ever prove their interest in the forfeited funds and therefore, the public fiduciary had no duty to segregate the funds.

With regards to the assertion that PCPF seized rather than protecting and ascertaining ownership of the aforementioned assets, Royal states that this allegation is fallacious, citing countless hours of “exhaustive discovery which included receipt, analysis and disclosure of fourteen notebook of financial records from numerous local and out of state financial institutions” along with numerous depositions. Royal denies James’ assertion that Royal should have known by January of 2008 that there was never any evidence of commingling of assets from JJR’s use of Adams’ power of attorney and again cites JJR’s failure to produce any records or documentation requested pursuant to the February 2007 order and injunction. Royal also disputes James’ conclusion that Adams’ signing of certain financial instruments is proof that no commingling or breach of fiduciary duty occurred.

Concerning the allegation that PCPF’s investment of the seized assets was not compliant with statutory requirements and resulted in decreased value due to stock market risk, Royal denies assertions of imprudent management or breach of fiduciary duty and states that contrary to the reported loss, during the period of August 2007 to September of 2010, investments yielded an \$11,518.98 gain.

In response to complainant’s allegation that Royal inappropriately expended seized assets on litigation without court authorization after the sanctions were appealed violated her obligation to protect and preserve the disputed funds, Royal states that the authorization to use the seized funds for litigation was given to the public fiduciary by Judge Munger in the August 1, 2007 order. Per Royal, the subject of the Rappeports’ appeal was the August 21, 2007 sanctions judgment not the August 1, 2007 order allowing Royal to expend the seized assets on litigation. Therefore, according to Royal, she retained the authority to expend the seized assets on litigation and pursuant to A.R.S. § 14-5424 (A)(23) as conservator for Adams, PCPF was statutorily authorized to hire attorneys to advise it and ultimately charge the estate for the incurred expenses. Royal states that the complainant incorrectly assumes that the public fiduciary could be represented by the Office of the Pima County Attorney, as no criminal charges were ever filed and therefore a special prosecutor would not be appointed.

Additionally, Royal denies the alleged ethical violations of ex-parte communications, lying to a superior court judge and dishonesty in discovery (lack of concern for truthfulness and veracity). Royal states that the transcripts of the June 7, 2007 status conference provide no evidence that ex-parte communications ever took place. Further, the license holder denies having lied to Judge Kelly during the January 29, 2008 hearing on the conservatorship petition for JJR, stating that all parties were present at both hearings and that there was no reason for her to attempt to deceive the court. With regards to the discovery violations, Royal asserts

that PCPF made a reasonable argument that JJR and GRR were not interested parties who should receive copies of the Adams annual accountings and that when the court disagreed with her, the accountings were provided. In addition, with regards to BB&T check # 107, Royal states that when it was brought to her attention that the appropriate disclosure may not have occurred, PCPF ensured that all parties received a copy of the check.

4. Division staff examined the following documents submitted by James, Royal and PCPF:
 - Extensive Pima County Superior Court filings, transcripts, minute entries, orders, and rulings for case # GC-2007-0078 from February of 2007 to November of 2014,
 - Memorandum Decision of October 16, 2008 in case # CA-CV 2007-0138 of the Court of Appeals II for the State of Arizona
 - Annual Accountings filed by PCPF for 2007-2010 for case # GC-2007-0078,
 - Settlement Agreements for the Estate of JJR versus the Estate of Adams and the community of JJR and GRR versus PCPF
 - Forensic accountings of the assets of JJR and Adams completed by Gorman Litigation Support Services in 2007 and BeachFleischman, PC in 2010
5. On March 27, 2015, Investigator Reiter and Division Manager, Anne Hunter conducted an interview with Amy Hubbell (“Hubbell”), attorney for the Pima County Public Fiduciary regarding allegation 2, investment of seized assets without complying with statutory requirements so that the funds that had previously been held in guaranteed bank deposit investments decreased in value due to stock market risk. Hubbell confirmed that the public fiduciary had the authority and duty to invest the funds once the August 21, 2007 sanctions judgment was issued. In addition, it was provided that PCPF employed the services of financial advisors from Morgan Stanley and Alliance Bernstein for the aforementioned investments. The initial loss in value of the mutual funds, per Ms. Hubbell, was due to the 2008 stock market crash. Hubbell stated that the money was not moved from the investments as the belief of the financial advisors was that to move the funds would result in a permanent loss and the market was expected to rebound, which would allow the investment to recoup the losses. With regards to the failure of Royal and PCPF to obtain approval for the investment plan as required by statute, Hubbell stated that the statute does not require prior approval, just approval. Per Hubbell the investments were approved by virtue of the approval of the first annual account in which the investments were detailed. She stated that the 1st and 2nd annual accounts were the subject of complaints filed by JJR and GRR with regards to the investments and that the judge refused to re-open or reconsider that approval of the accounts regarding the issue and dismissed claims against the 1st and 2nd accounts. Later objections to the 3rd and 4th accounts were allowed.

ANALYSIS OF ALLEGATIONS:

Allegation 1: James alleges Royal failed to segregate seized but disputed assets.

Court records reflect that on February 8, 2007, Judge Munger of the Pima County Superior Court ordered that PCPF's Application for Preliminary Injunction filed on February 2, 2007 be granted, restraining JJR and GRR from "selling, transferring or removing any property previously or currently belonging to Cherie Adams from accounts held in the name of Jack J. Rappeport, Ginger Rogers Rappeport and/or Cherie Adams and/or in any other name in which Cherie Adams may have a beneficial interest at Bank of America, N.A. or any other banking institution pendent lite." In addition, the court ordered that JJR and GRR immediately turn over the records listed in Exhibit A attached to the Application for Preliminary Injunction and the Rappeports were also restrained from selling, transferring or encumbering two separate pieces of real estate.

On May 14, 2007, the court ordered that the Bank of America, N.A. turn over all funds that it was holding in all accounts pursuant to the February 8, 2007 order to PCPF. The court ordered that PCPF shall place those funds in its trust account at Alliance Bank of Arizona pending the outcome of the case.

At the June 7, 2007 Scheduling Conference, transcripts reflect that Royal confirms that the seized funds are in her trust account at Alliance Bank of Arizona in the amount of \$2.17 million dollars. The judge instructs Royal that if she needs an order authorizing her to use the funds then she needs to submit an order. Transcripts of a hearing held August 1, 2007 indicate that Judge Munger signed the order submitted by PCPF on June 21, 2007 requesting that court authorization be given to the public fiduciary to expend the seized funds for litigation.

Court records indicate that on August 21, 2007, the court ordered a sanctions judgment that JJR, GRR and their community forfeit all interest they have in all funds held by the PCPF as Conservator for Adams, in the approximate amount of \$2,159,150.00. The Rappeports appealed the August 21, 2007 sanctions judgment on September 24, 2007. The Memorandum Decision of Division Two of the Court of Appeals of the State of Arizona filed October 16, 2008 vacates the August 21, 2007 sanctions judgment and remands the matter back to the superior court to reconsider the sanctions ordered for the discovery violation and resolve the matter of JJR's competency.

Per the Settlement Agreement between the Estate of Adams and the Estate of JJR entered into by the personal representatives for the respective estates on October 11, 2010, both Adams and JJR passed away in 2010 and the funds valued at \$1,640,000.00 were divided between the two parties with the estate of Adams receiving approximately \$400,000.00 and the estate of JJR receiving the balance.

James alleges that Royal had a duty to segregate the funds that were seized pursuant to the February 8, 2007 injunction, that the when Royal took possession of the disputed funds she

became JJR's fiduciary and that the failure to segregate disputed funds was an act of co-mingling.

ACJA § 7-202 (J)(4) established through Administrative Order No. 2006-71 requires the fiduciary to provide competent management of the property and income of the estate, marshal and secure property and income of the protected person upon appointment [ACJA § 7-202 (J)(4)(b)] and not co-mingle any of the protected person's assets with the assets of other protected persons or the fiduciary's own assets [ACJA § 7-202 (J)(4)(c)].

An examination of the aforementioned court orders found that Royal was not in violation of any court orders concerning the handling of the disputed assets. While JJR claims an ownership interest in all or a part of the funds, Royal, on behalf of Adams, did the same. The Court ordered Royal to place all of the funds in her trust account, which she did. Under these circumstances and in light of the court order, we have found no co-mingling.

James further asserts that in taking possession of disputed assets Royal became JJR's fiduciary by default. However, on November 18, 2011, Judge Harrington in an In Chambers Under Advisement Ruling found that "She (Royal) never expressly or impliedly undertook the duty nor was she ordered to undertake the duty of a fiduciary as it related to her adversary JJR. Just because the Public Fiduciary was ordered to hold those funds in her Trust Account it does not follow that she became a fiduciary for JJR, her adversary. The Public Fiduciary through her Trust Account was answerable to her client Adams, the Court and the State Bar but it simply is not logical that she owed fiduciary duties to her adversary JJR." No evidence of a violation of fiduciary duty was found with regards to the failure to segregate disputed assets or of the co-mingling of assets. Therefore, allegation 1 is not substantiated.

Allegation 2: James alleges Royal invested seized assets without complying with statutory requirements so that the funds that had previously been held in guaranteed bank deposit investments decreased in value due to stock market risk.

Allegation 2A: Royal failed to obtain approval of her investment plan, as required by A.R.S. § 14-5603(B)(1).

A.R.S. § 14-5603 governs the deposit and investment of all funds coming into the custody of a public fiduciary. A.R.S. § 14-5603(B)(1) states in part:

The public fiduciary may establish or continue an estate or investment plan of the public fiduciary's ward if all of the following apply: 1. The public fiduciary receives the approval of the court for the plan.

The complainant asserts that the public fiduciary did not seek or receive approval of the investment plan and therefore was in violation of A.R.S. § 14-5603. PCPF asserts that the investments were approved by virtue of the court's approval of the annual accounting in which the investments were documented. PCPF's argument regarding approval of the

investment plan through the annual accounting process is not supported by the intent of A.R.S. § 14-5603(B)(1). The statute protects the ward and the public from imprudent investments. Such purpose is not furthered by approval that only occurs after an investment and possibly economic loss. Therefore allegation 2A, is substantiated.

Allegation 2B: Royal failed to invest in a manner that complied with the preferences of the ward.

This matter in question is whether or not the fiduciary took the necessary measures to ensure that the investments were based on the determined preferences of the ward as required in ACJA § 7-202 (J)(1)(b) which states “*The fiduciary shall make all decisions in accordance with the determined preferences of the ward or protected person, past or current, in all instances except when the fiduciary is reasonably certain the decision will result in substantial harm.*” James asserts that the seized joint assets of Adams and JJR were previously invested in guaranteed bank deposits which are conservative investments with little to no risk of loss of capital, and that Royal’s mutual fund investments of the greater portion of the seized funds subjected them to stock market risk which was inconsistent with the ward’s documented conservative investment history.

The ward’s history of investments, albeit investments made via JJR’s power of attorney for Adams appears to be very conservative, incurring little to no risk and the investment of the seized funds in a higher risk investment option regardless of motive, is inconsistent with what could be determined as Adams’ preferences. Therefore, Allegation 2B is substantiated.

Allegation 3: James alleges Royal spent seized assets on litigation, after the sanctions order assessing ownership to the ward was appealed and; without any court authorization, spent seized assets for the expenses of one of the parties to the disputed funds without knowing who the owner of the funds was.

Complainant asserts that Royal expended the seized assets on litigation without authorization. A review of the order filed June 21, 2007 and signed on August 1, 2007 indicates that the court ordered that the public fiduciary could use the seized funds to pay fees for the ongoing litigation. With regards to the October 2008 appeals decision referenced in the allegation, the matter appealed by JJR and GRR was the August 21, 2007 sanctions judgment which forfeited the Rappeports’ interest in the seized assets. The appeals decision vacated the August 21, 2007 sanctions judgment, but the August 1, 2007 order which gave the public fiduciary the authority to spend the seized funds on litigation was never addressed in that decision, nor does it appear to be the subject of any later appeals.

Subsequent to the filing of this complaint, Judge Harrington considered this issue amongst others in a November 18, 2011 Under Advisement Ruling and with regards to November 1, 2007 order and all orders of the court in case #GC-2007-0078 prior to that date stated,

“The Rapoport’s appeal dealt only with the August 21, 2007 Judgment. None of the previous orders were challenged on appeal by the Rapapoorts or anyone else. Thus, those orders designated above which preceded the August 21, 2007 remained in effect throughout the case,” this included the August 1, 2007 order granting the public fiduciary the authority to use the funds for litigation. Throughout the pendency of the case, Royal’s expenditure of the seized assets for litigation was done with the court’s authority provided in the August 1, 2007 order. Therefore, Allegation 3 is not substantiated.

Allegation 4: James alleges that Royal participated in ex-parte communications with the court, not related to an emergency.

Complainant alleges that a June 7, 2007 status conference at which JJR was neither present nor represented was, in its entirety, ex-parte communication between Royal and the court. Royal responds that the allegation is baseless, that the Rapapoorts were properly noticed with regards to the hearing and neither chose to appear or have counsel appear in their stead and that the judge chose to convene the hearing in their absence. Staff, having reviewed ACJA § 7-202, found no provision which expressly prohibits a licensed fiduciary from ex-parte communications with the court. Therefore, Allegation 4 is not substantiated.

Allegation 5: James alleges Royal seized assets rather than fulfill her duty to protect assets and ascertain ownership of assets.

James asserts that subsequent to the October 2008 appeals decision, Royal was obligated to reconsider the initial seizure of assets under A.R.S. § 46-455 and that her failure to do so and her continued pursuit to procure the disputed assets without ascertaining ownership was acting in bad faith, and solely an attempt to sanction JJR and confiscate his property. In addition, she alleges that by January of 2008, Royal had information from a forensic accounting provided by the Gorman Preliminary Report (an accounting requested by JJR’s attorney) that there was never any evidence of JJR’s co-mingling of Adams’ assets. In her response, Royal enumerates extensive efforts on the part of PCPF to ascertain ownership of the funds including the acquisition of fourteen notebooks of financial records and multiple depositions, and opines that JJR’s failure to comply with numerous court orders to account for his actions under Adams’ power of attorney hampered any efforts to ultimately determine ownership.

As previously established, the Preliminary Injunction, requested by PCPF and ordered by the court on February 8, 2007 which provided for the seizure of assets pursuant to A.R.S. § 46-455 was at no time during the pendency of the proceedings, the subject of an appeal. Furthermore, also as previously established, the October 2008 appeals decision did not address or overturn any of the orders with regards to this initial seizure of assets.

ACJA § 7-202 (J)(4)(b) provides, “*On appointment, the fiduciary shall take all reasonable steps to marshal and secure the property and income of the protected person’s estate as soon as possible. The fiduciary shall provide stewardship of the property for safekeeping*

and, at a minimum, record pictorially and establish and maintain accurate records of all real and personal property.” Court records reflect that the public fiduciary investigated JJR’s use of Adams’ power of attorney and the possibility of JJR’s exploitation of Adams over the period from 1997-2007 as requested by the APS referral, prior to petitioning the court for the preliminary injunction to freeze the assets, as seen in the transcripts of the February 2nd and 8th, 2007 proceedings. Additionally, Royal reports to the court at that time that efforts to obtain documentation from JJR with regards to his use of the power of attorney and documentation as to de facto conservatorship management of her finances were in vain. Royal asserts that JJR’s inaction or non-compliance required freezing of the assets in order for her to marshal and safeguard assets, which potentially belonged to Adams, from a possible exploiter. It appears the preliminary injunction was legally obtained and executed and that injunction remained in place until it was dissolved subsequent to the deaths of both Adams and JJR in 2010, so that the personal representatives for Adams and JJR could settle the estates.

In reviewing the matter of the public fiduciary’s handling of the seized assets, Judge Harrington states in the aforementioned November 18, 2011 Under Advisement Ruling, “It is clear that the Public Fiduciary acted within the scope of the orders of this Court when it place(d) the 2.1 million dollars into the Public Fiduciary’s Trust Account, when it subsidized its’ litigation and when it took other steps with the money pursuant to the judgment and other Orders,” and further, “To the extent the Public Fiduciary exercised dominion and control over the funds, she did so with lawful jurisdiction and legally, and pursuant to Court orders. At no time were those funds obtained or received by the Public Fiduciary without lawful justification or illegally.” Therefore, allegation 5 is not substantiated.

Allegation 6: James alleges Royal lied to a judge of Superior Court in contravention of Ethical Rules.

James alleges Royal violated ER 3.3 and ER 4.1 of the Arizona Rules of Professional Conduct, stating that Royal lied to Judge Kelly during a hearing for limited conservatorship of JJR on January 29, 2008 in saying that Judge Munger “ordered her to file a petition for conservatorship of Mr. Rappeport.” James asserts that the court neither authorized nor ordered Royal to file a petition and that in doing so, Royal entered into a conflict of interest as a plaintiff in a suit against Rappeport.

James states that she filed a complaint with the Arizona State Bar (“Bar”) with regards to Royal’s alleged violation of ER 3.3 (a)(1) which states, “*A lawyer shall not knowingly: make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer*” and ER 4.1 (a) which states, “*In the course of representing a client a lawyer shall not knowingly: make a false statement of material fact or law to a third person.*” Division staff contacted the Bar with regards to Royal’s disciplinary record to determine whether formal discipline subject to public records resulted from the complaint. The Bar reported that they had no record of formal discipline against Royal’s license.

The second issue of whether or not Royal, in filing a petition for appointment of conservator for JJR, would be entering into a conflict of interest in violation of ACJA § 7-202 (J)(2)(b), “*The fiduciary shall avoid self-dealing or the appearance of a conflict of interest. Self-dealing or a conflict of interest arises where the fiduciary has some personal or agency interest other individuals may perceive as self-serving or adverse to the position or best interest of the ward, protected person, or decedent. In situations where no other services are available, the fiduciary shall disclose the potential conflict in a petition to the superior court, seeking approval prior to the provision of services,*” was addressed by Judge Munger in the January 14, 2008 proceedings. On page 36 of the hearing transcripts (lines 1-9) in a response to William Walker (“Walker”), attorney for PCPF’s, statement as to whether or not it would be appropriate for PCPF to proceed with a petition if all other interested parties failed to do so, Judge Munger states, “I would not see a conflict with you filing a petition, as long as you’re not asking to be appointed conservator.”

Royal states in her response to the complaint that she believed, prior to the due date for filing a petition established in the January 28th hearing, that the other interested parties had failed or may fail to file a petition and thus she filed a petition. A review of the petition filed by Royal in the matter and subsequent documents show that Royal nominated attorney, Mark Rubin, for conservator of JJR and not herself or the public fiduciary. Further examination of the January 14th and 28th transcripts show that Mark Rubin was one of three fiduciaries recommended by Judge Munger as capable of dealing with the complexity of the circumstances. Royal asserts that the filing of the petition was for the sole purpose of expediting the conservatorship proceedings for JJR with the ultimate goal of reaching settlement for her ward, Adams. Royal did not nominate herself as the conservator for JJR and her nomination of Mark Rubin was consistent with the opinion of the court with regards to the level of competence and skill needed to appropriately represent JJR. Therefore, Allegation 6 is not substantiated.

Allegation 7: James alleges Royal has demonstrated a lack of concern for truthfulness and veracity.

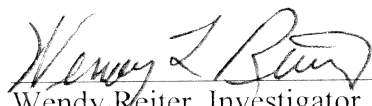
The complainant supports the allegation that Royal has demonstrated lack of concern for truthfulness and veracity with three examples: 1) Royal contested JJR’s incapacity after filing a petition for appointment of conservatorship; 2) Royal failed to notice JJR, as an interested party, of the annual accountings in the Adams conservatorship; 3) Royal failed to disclose a check, signed by Adams, during discovery which resulted in a “significant setback to the allegations of theft against Mr. Rappeport.”

In her response regarding Allegation 7, Royal does not address complainant’s first example. With regards to the second example, Royal stated that she did not believe that JJR was an interested party in the case entitled to notice, but acknowledged that the court later ordered her to release copies of the annual accountings to counsel for JJR, and she complied. To the third example concerning the non-disclosure of the check, Royal responded that when it was brought to PCPF’s attention that the check may not have been


disclosed, Royal immediately complied with the court's order to provide copies of the check to all interested parties.

In a review of the transcripts for the October 23, 2008 hearing referenced as evidence of Royal's lack of truthfulness regarding the contesting of JJR's incapacity after herself filing a petition for appointment of conservator, staff found that although attorneys Reich and Basham argued judicial estoppel with regards to Royal taking contrary positions in earlier proceedings, it does not appear that the court ever took a position on the matter. In a November 18, 2011 Under Advisement Ruling, the court does address the matter of Royal's obligation to notice JJR as an interested party in the Adams case and finds that JJR "was not entitled to notice of those accountings," pursuant to A.R.S. § 14-5419(C). Finally, with respect to the alleged discovery violation, staff found no evidence in the court record that the court determined Royal intentionally withheld the evidence, and the lack of a disciplinary history with the Bar implies that Royal was not found in violation of the rules concerning discovery. Further, staff found that even assuming that the examples provided by the complainant had been true, a determination that those examples evidenced a lack of concern for truthfulness and veracity would be difficult to prove. Therefore, Allegation 7 is not substantiated.

SUBMITTED BY:

 6/25/15
Wendy Reiter, Investigator Date
Certification and Licensing Division

REVIEWED BY:

 6/25/15
Certification and Licensing Division Date

DECISION OF THE PROBABLE CAUSE EVALUATOR:

Having conducted an independent review of the facts and evidence gathered during the course of the investigation of complaint number **10-0016** the Probable Cause Evaluator:

☐ requests division staff to investigate further.

☒ determines probable cause does not exist the certificate holder has committed the alleged acts of misconduct as to Allegation(s):

1, 3, 4, 5, 6, 7

☒ determines probable cause exists the certificate holder committed the alleged acts of misconduct as to Allegation(s):

2(A) and 2(B)

Mike Baumstark 6/26/18

Mike Baumstark
Probable Cause Evaluator

Date

**ARIZONA SUPREME COURT
ADMINISTRATIVE OFFICE OF THE COURTS
ORDER OF THE BOARD**

***CERTIFICATE
HOLDER/LICENSEE
INFORMATION***

| | |
|------------------------------|---------------------------------|
| Certificate Holder: | Anita Royal |
| Certification Number: | 20241 |
| Business Name: | Pima County Public Fiduciary |
| Certificate Number: | 20247 |

Recommendation:

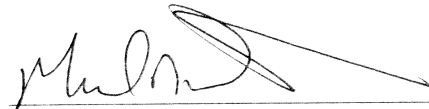
It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding Anita Royal has not committed the alleged act(s) of misconduct as detailed in Allegations 1, 3, 4, 5, 6 and 7 of the Investigation Summary and Allegation Analysis Report in complaint number 10-0016.

It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding Anita Royal has committed the alleged act(s) of misconduct as detailed in Allegations 2A and 2B of the Investigation Summary and Allegation Analysis Report in complaint number 10-0016.

It is further recommended the Board enter a finding grounds for informal disciplinary action exists pursuant to Arizona Code of Judicial Administration ("ACJA") § 7-201(H)(6)(a) for act(s) of misconduct involving violation of A.R.S. § 14-5603 by investing certain funds prior to receiving court approval and ACJA § 7-202(J)(1)(b) by investing certain funds in a manner that was not supported by the historical preferences of the ward.

It is further recommended the Board issue a Letter of Concern.

SUBMITTED BY:

 6/30/15

Director

Date

Certification and Licensing Division

FINAL DECISION AND ORDER:

The Board having reviewed the above Investigation Summary, Allegation Analysis Report, finding of the Probable Cause Evaluator, and Recommendation regarding complaint number 10-0016 and Anita Royal, certificate number 20241, makes a finding of facts and this decision, based on the facts, evidence, and analysis as presented and enters the following order:

☐ requests division staff to investigate further.

☐ refers the complaint to another entity with jurisdiction.

Referral to: _____

☐ dismisses the complaint, and:

☐ requests division staff prepare a notice of dismissal pursuant to ACJA § 7-201(H)(5)(c)(1).

☐ requests division staff prepare a notice of dismissal and an Advisory Letter pursuant to ACJA § 7-201(H)(5)(c)(2).

☐ determines grounds for discipline exist demonstrating the certificate holder committed the alleged act(s) of misconduct and:

☐ enter a finding the alleged act(s) of misconduct or violation(s) be resolved through informal discipline, pursuant to ACJA § 7-201(H)(7) and issue a Letter of Concern.

☐ enter a finding the alleged act(s) of misconduct or violation(s) be resolved through formal disciplinary proceeding, pursuant to ACJA § 7-201(H)(9).

☐ requests the certificate holder appear before the Board to participate in a Formal Interview, pursuant to ACJA § 7-201(H)(8).

☐ orders the filing of Notice of Formal Charges, pursuant to ACJA § 7-201(H)(10).

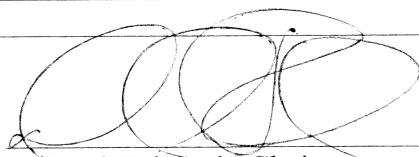
☐ enters a finding the public health, safety or welfare is at risk, requires emergency action, and orders the immediate emergency suspension of the certificate and sets an expedited hearing for:

Date, Time, and Location: _____

☐ adopts the recommendations of the Division Director.

[✓] does not adopt the recommendations of the Division Director and orders:

Letting Council in to allegation 2A only.



Deborah Primock, Chair
Fiduciary Board of

7/9/15
Date



Supreme Court

STATE OF ARIZONA
ADMINISTRATIVE OFFICE OF THE COURTS

Scott Bales
Chief Justice

David K. Byers
Administrative Director
of the Courts

July 9, 2015

Anita Royal

RE: LETTER OF CONCERN - Complaint Number 10-0016

Dear Ms. Royal:

On July 9, 2015, the Fiduciary Board ("Board"), pursuant to the Arizona Code of Judicial Administration ("ACJA") § 7-201(H)(6)(a), (H)(7), and (H)(24)(a)(6)(a):

1. Reviewed the attached Investigation Summary, Probable Cause Evaluation Report, and Recommendation;
2. Entered a finding grounds for discipline exist in this complaint;
3. Ordered resolution of the complaint through an informal disciplinary sanction; and,
4. Entered the enclosed Order to issue this Letter of Concern as to Allegations 2A and 2B.

(Dale)

ACJA § 7-201(H)(24)(b)(2) provides:

A letter of concern is a written informal discipline sanction and is not appealable. A certificate holder may file a response to the letter of concern no later than fifteen days after the date of the letter of concern. The certificate holder's response is public and division staff shall file the response in the complaint file.

If you choose to submit a written response, please address it to the Board. Pursuant to ACJA § 7-201(H)(1)(g) and (H)(24)(b)(2), this Letter of Concern and your response are not confidential.

Sincerely,

Deborah Primock, Chair
Fiduciary Board

Enclosures